

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: CARLOS MARTINS & MICHELLE DOWNING

(Case No. 12372)

A hearing was held after due notice on October 21, 2019. The Board members present were: Dr. Kevin Carson, Mr. Jeff Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the corner front for an existing structure.

Findings of Fact

The Board found that the Applicants are a variance of 7 feet from the fifteen (15) feet corner front setback for a platform for a generator. This application pertains to certain real property located on the northeast corner of Todd Drive and Hassell Avenue in the Bayview Park subdivision (911 Address: 34956 Todd Drive, Bethany Beach); said property being identified as Sussex County Tax Map Parcel Number 1-34-20.12-6.00. After a hearing, the Board made the following findings of fact:

1. The Board was given copies of the Application, a survey of the property dated September 12, 2019, an elevation certificate, a building permit, findings of fact for Case No. 12175, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Bryan Elliott, who works for Insight Homes, was sworn in to give testimony about the Application.
4. The Board found that Mr. Elliott testified that the Applicants obtained variances in 2018 but now request this variance for the platform which projects 2 feet farther into the setback area than the previously approved dwelling.
5. The Board found that Mr. Elliott testified that the Property is a small lot with a unique shape which affected the placement of the house. He noted that the lot lines are not perpendicular.
6. The Board found that Mr. Elliott testified that the Property cannot otherwise be developed as the mechanical room on this side of the home and the generator would not be as efficient if it was moved to another location. He also noted that the generator would experience a power drop if moved.
7. The Board found that Mr. Elliott testified that the exceptional practical difficulty was not created by the Applicants as they did not create the shape of the lot.
8. The Board found that Mr. Elliott testified that the variance will not alter the character of the neighborhood. There are no neighbors adjacent to this side of the lot. Rather, there is a common area adjacent to this side of the lot.
9. The Board found that Mr. Elliott testified that there is a large gap between the edge of paving of Hassell Drive and the property line.
10. The Board found that Mr. Elliott testified that the house is elevated to raise the house above the flood plain and to comply with flood zone requirements but that generators cannot be placed under the house.
11. The Board found that Mr. Elliott testified that the variance requested is the minimum variance that will afford relief and allow for a generator.
12. The Board found that Mr. Reiger was sworn in to give testimony about the Application. Mr. Reiger initially opposed the Application but indicated his support of the Application after learning that the small lot ordinance did not affect the corner front yard setback requirements for small lots.

13. The Board found that one party appeared in support of and no parties appeared in opposition to the Application.
14. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and unrebutted, the Board determined that the application for the variances met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique due to its size and shape and due to the fact that the Property is a corner lot within a flood zone. The Property is quite small as evidenced by the survey and the lot is not square. The Property consists of only 5,227 square feet. The unique characteristics of this Property limit the buildable area available to the Applicants and have created an exceptional practical difficulty and unnecessary hardship for the Applicants who seek to retain an existing platform for a generator on the lot
 - b. The unnecessary hardship and exceptional practical difficulty are not being created by the provisions of the Sussex County Zoning Code.
 - c. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property has a unique size and shape and the buildable area thereof is limited due to these conditions. The building envelope is further constrained by the fact that the Property is a corner lot subject to flood zone restrictions. The generator must be elevated to meet the flood zone requirements. The Applicants seek to retain the platform on the lot but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow this platform to remain on the lot. The Board is convinced that the shape and location of this structure is also reasonable, which is confirmed when reviewing the survey provided by the Applicants. The generator which rests on the platform, and is the reason for the platform, cannot be moved elsewhere as it would significantly lose its functionality as the mechanical room is located on this side of the dwelling.
 - d. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants. The Applicants did not create the unusual size and shape of the Property. The unique lot size and shape have resulted in a limited building envelope on the Property and the small building envelope has created the exceptional practical difficulty. The unique characteristics of the Property are clear when reviewing the survey. The limited building envelope was further restrained by the fact that the Property is a corner lot in a flood zone. The Board is convinced that the exceptional practical difficulty and unnecessary hardship were not created by the Applicants but was created the lot's unique characteristics.
 - e. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the platform will have no effect on the character of the neighborhood. No evidence or testimony was presented which demonstrated that the variance would somehow alter the essential character of the neighborhood. Furthermore, the edge of paving of Hassell Drive does not match the corner front property line. As such, the encroachment into this setback area is likely not as noticeable due to the gap between the actual road and the property line.
 - f. The variance sought is the minimum variance necessary to afford relief and the variance requested represents the least modification possible of the regulation at issue. The Applicant has demonstrated that the variance

sought will allow the Applicant to retain the platform on the lot. No additions or modifications to the platform are proposed.

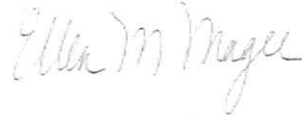
- g. The condition or situation of the Property and the intended use of the Property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Sussex County Zoning Code.

The Board approved the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor of the motion to approve were Dr. Kevin Carson, Mr. Jeffrey Chorman, Ms. Ellen Magee, Mr. John Williamson, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



Ellen M. Magee
Chair

If the use is not established within two (2) years from the date below the application becomes void.

Date December 17, 2019